
INSTALLMENT FINANCING CONTRACT

BETWEEN

CITY OF DURHAM, NORTH CAROLINA

AND

PNC BANK, NATIONAL ASSOCIATION

Dated
April 15, 2016

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INSTALLMENT FINANCING CONTRACT

This **INSTALLMENT FINANCING CONTRACT**, dated as of April 15, 2016 (the "*Contract*"), between the **CITY OF DURHAM, NORTH CAROLINA**, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina (the "*City*"), and **PNC BANK, NATIONAL ASSOCIATION**, a national banking association duly organized and existing under the laws of the United States of America (the "*Lender*");

WITNESSETH:

WHEREAS, the City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina;

WHEREAS, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, the City may finance the acquisition of certain improvements, real property and equipment by contracts that create in such improvements, real property and equipment a security interest to secure repayment of the moneys advanced or made available to acquire or improve such equipment;

WHEREAS, after a public hearing and due consideration, the City Council of the City has determined to (1) pay the capital costs of the construction of a new police headquarters and 911 facility (the "*Police Headquarters*"), (2) refinance upgrades to the City's public safety radio infrastructure (the "*Radio Infrastructure*"), (3) pay the capital costs of other general government projects (the "*General Government Projects*," and together with the Police Headquarters and the Radio Infrastructure, the "*Project*");

WHEREAS, in order for the City to obtain the funds to pay the costs of the Project, the City has determined to enter into this Contract whereby the Lender will advance funds, from time to time, to the City to pay, together with other available funds, the costs of the Project, and the City will repay such advancement with interest in installments pursuant to the terms of this Contract;

WHEREAS, as security for the performance of its obligation under this Contract, including the payment of the installment payments hereunder, the City will execute and deliver a Deed of Trust, dated as of the date of delivery thereof (the "*Deed of Trust*"), to the deed of trust trustee named therein, for the benefit of the Lender, pursuant to which the City will grant a lien on the Mortgaged Property (hereinafter defined);

WHEREAS, the Lender is willing to advance money to the City for payment of the costs of the Project, and the City is willing to repay the money so advanced by the Lender in installments as more fully provided herein; and

WHEREAS, the City and the Lender have each duly authorized the execution and delivery of this Contract;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1 *Definitions and Rules of Construction.* Unless the context otherwise indicates, words importing the singular number include the plural number and vice versa. The words “hereby”, “herein”, “hereof”, “hereto”, “hereunder” and other words of similar import refer to this Contract as a whole and not to any particular Article, Section or subsections hereof. All references herein to “Articles”, “Sections” and other subdivisions are to the corresponding Articles, Sections or subsections of this Contract unless some other reference is indicated.

“*Act*” means Section 160A-20 of the General Statutes of North Carolina, as amended.

“*Advance*” means each advance of funds made hereunder by the Lender to the City pursuant to an Advance Request.

“*Adjusted LIBOR Rate*” means a rate of interest per annum equal to the sum obtained by adding (i) 68.5% of One-Month LIBOR plus (ii) 0.37% per annum

“*Advance Request*” has the meaning given such term in Section 3.1.

“*Advance Schedule*” means the Advance Schedule attached hereto as Exhibit A and incorporated herein by reference which sets forth the date and amount of each Advance and each prepayment of the Advancement as provided herein.

“*Advancement*” means the sum of all Advances, less the amounts of all prepayments of the Advancement.

“*Base Rate*” means the higher of (a) the Prime Rate and (b) the sum of the Federal Funds Open Rate plus 0.50% per annum. If the Federal Funds Open Rate at any time is a negative number, the Federal Funds Open Rate will be deemed to be zero.

“*Business Day*” shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in Raleigh, North Carolina.

“*Calculation Year*” means, initially, the period from the date of Closing to the first anniversary of Closing and, thereafter, each twelve-month period commencing on [April 15] and ending on the next [April 14].

“*City*” means the City of Durham, North Carolina, a municipal corporation existing under and by virtue of the Constitution and laws of the State of North Carolina, and any successor entity.

“*City Council*” means the City Council of the City.

“*Closing*” means the date on which the City executes and delivers this Contract.

“*Closing Costs*” means and further includes all items of expense directly or indirectly payable by or reimbursable to the City relating to the financing of the Project, including, but not limited to, filing and recording costs, settlement costs, printing costs, word processing costs, reproduction and binding costs, legal fees and charges and financing and other professional consultant fees.

“*Commitment Amount*” means \$95,000,000 as the same may be adjusted pursuant to Section 3.1.

“Commitment Termination Date” means the earliest of (a) the date on which the Unused Commitment Amount is reduced to zero pursuant to the terms of this Contract and (b) the third anniversary of Closing.

“Contract” means this Installment Financing Contract, including any amendment or supplement hereto permitted herein.

“Deed of Trust” means the Deed of Trust, Security Agreement and Fixture Filing, dated as of April 15, 2016, from the City to the Deed of Trust Trustee, for the benefit of the Lender, securing the Installment Payments and other obligations specified hereunder and thereunder, as supplemented and amended from time to time, pursuant to which the City will grant a lien on the Mortgaged Property.

“Deed of Trust Trustee” means the person or other entity at the time serving as trustee under the Deed of Trust.

“Default Rate” shall mean the greater of the (i) 12%, or (ii) the Base Rate plus 3.00%; provided, however, the Default Rate shall not exceed the Maximum Rate.

“Enforcement Limitation” means the provisions of the Act that provide that no deficiency judgment may be rendered against the City in any action for breach of a contractual obligation incurred under the Act and that the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under this Contract.

“Event of Nonappropriation” means (a) the failure by the City Council to budget and appropriate in its budget for the ensuing Fiscal Year adopted on or about June 30 of each year moneys sufficient to pay all Installment Payments and any reasonably estimated additional payments under this Contract coming due in the next ensuing Fiscal Year or (b) the City Council’s deletion from its duly adopted budget of any appropriation for the purposes specified in clause (a) above. If during any Fiscal Year, any additional payments become due that were not included in the City’s current budget, and if there is no money available to pay such additional payments before the date on which such additional payments are due, an Event of Nonappropriation is deemed to have occurred on notice by the Lender to the City to such effect.

“Federal Funds Open Rate” means, for any day, the rate per annum (based on a year of 360 days and actual days elapsed) which is the daily federal funds open rate as quoted by ICAP North America, Inc. (or any successor) as set forth on the Bloomberg Screen BTMM for that day opposite the caption **“OPEN”** (or on such other substitute Bloomberg Screen that displays such rate), or as set forth on such other recognized electronic source used for the purpose of displaying such rate as selected by the Lender (an *“Alternate Source”*) (or if such rate for such day does not appear on the Bloomberg Screen BTMM (or any substitute screen) or on any Alternate Source, or if there shall at any time, for any reason, no longer exist a Bloomberg Screen BTMM (or any substitute screen) or any Alternate Source, a comparable replacement rate determined by the Lender at such time (which determination shall be conclusive absent manifest error); provided however, that if such day is not a Business Day, the Federal Funds Open Rate for such day shall be the “open” rate on the immediately preceding Business Day. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Federal Funds Open Rate.

“Fiscal Year” means the period beginning on July 1 of any year and ending on June 30 of the following year.

“Installment Payment Date” means (1) with respect to the date on which interest on the Advancement is due and payable, the first Business Day of each month and the third anniversary of Closing (or as may be provided otherwise in connection with any prepayment of the Advancement) and

(2) with respect to the date on which the Advancement is due and payable, except as otherwise provided in Section 4.2 hereof, the third anniversary of Closing (or as may be provided otherwise in connection with any prepayment of the Advancement).

“Installment Payments” means the payments required to be paid by the City pursuant to Section 4.1 in order to repay the Advancement.

“Investment Obligation” means any security or investment authorized by Section 159-30 of the General Statutes of North Carolina, as may be amended from time to time, or any substitute or successor statute.

“Lender” means PNC Bank, National Association, a national banking association duly organized and existing under the laws of the United States of America, and any successor thereto.

“LGC” means the Local Government Commission of North Carolina, a division of the Department of the State Treasurer, and any successor thereto.

“LIBOR Reserve Percentage” means the maximum effective percentage in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including, without limitation, supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as *“Eurocurrency liabilities”*).

“Mortgaged Property” means the real property constituting the Project subject to the lien of the Deed of Trust, together with all of the buildings, improvements and fixtures located or to be located thereon.

“Maximum Rate” means, with respect to the Adjusted LIBOR Rate, 12.00% and, with respect to the Default Rate, 20%.

“One-Month LIBOR” means, for each Reset Date, the interest rate per annum determined by the Lender by dividing (1) the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which US dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by the Lender which has been approved by the British Bankers’ Association as an authorized information vendor for the purpose of displaying rates at which US dollar deposits are offered by leading banks in the London interbank deposit market (an *“Alternate Source”*), at approximately 11:00 a.m., London time, two (2) Business Days prior to such Reset Date, as the one month London interbank offered rate for U.S. Dollars commencing on such Reset Date (or if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any Alternate Source, a comparable replacement rate determined by the Lender at such time (which determination shall be conclusive absent manifest error)), by (2) a number equal to 1.00 minus the LIBOR Reserve Percentage. In the event that LIBOR at any time is a negative number, One-Month LIBOR shall be deemed to be zero.

“Net Proceeds” means any proceeds of insurance or taking by eminent domain or condemnation paid with respect to the Mortgaged Property remaining after payment therefrom of any expenses (including attorneys’ fees) incurred in the collection thereof.

“Permitted Encumbrances” means and includes (a) liens for taxes, assessments and other governmental charges due but not yet payable; (b) landlord’s, warehouseman’s, carrier’s, worker’s, vendor’s, mechanic’s and materialmen’s liens and similar liens incurred in the ordinary course of business remaining undischarged for not longer than 60 days from the filing thereof; (c) attachments remaining undischarged for not longer than 60 days from the making thereof; (d) liens in respect of pledges or

deposits under workers' compensation laws, unemployment insurance or similar legislation and in respect of pledges or deposits to secure bids, tenders, contracts (other than contracts for the payment of money), leases or statutory obligations, or in connection with surety, appeal and similar bonds incidental to the conduct of litigation; (e) the liens created by the Deed of Trust; (f) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which the City certifies in writing to the Lender will not materially impair the use of the Project for its intended purpose or the marketability of the Mortgaged Property, as applicable; (g) any lease of all or any portion of the Mortgaged Property permitted by Section 8.2(b) of this Contract; (i) any other encumbrances described in the policy evidencing title insurance required pursuant to Section 5.4 and (h) any other encumbrance consented to by the Lender.

"Prime Rate" means the rate publicly announced by the Lender from time to time as its prime rate. The Prime Rate is determined from time to time by the Lender as a means of pricing loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index, and does not necessarily reflect the lowest rate of interest actually charged by the Lender to any particular class or category of customers.

"Project" means, collectively, (1) the construction of a new police headquarters and 911 facility (the *"Police Headquarters"*), (2) upgrades to the City's public safety radio infrastructure (the *"Radio Infrastructure"*) and (3) other general government projects (the *"General Government Projects"*).

"Reset Date" means the first day of every month, provided that: (a) if any such day is not a Business Day, then the first succeeding day that is a Business Day shall instead apply, unless that day falls in the next succeeding calendar month, in which case the next preceding day that is a Business Day shall instead apply, and (b) if any such day is a day of a calendar month for which there is no numerically corresponding day in certain other months (each, a *"Non-Conforming Month"*), then any Reset Date that falls within a Non-Conforming Month shall be the last day of such Non-Conforming Month.

"Site" means the real property identified in Exhibit A to the Deed of Trust.

"State" means the State of North Carolina.

"Term Loan Interest Rate" means a per annum rate of interest equal to (1) for the first 90 days after the third anniversary of Closing, the Base Rate, and (2) for the 91st day after the third anniversary of Closing and thereafter, the Base Rate + 2.00%.

"Unused Commitment Amount" means, as of the date of determination, the Commitment Amount as of such date less the sum of all Advances as of such date (without giving effect to any prepayments thereof).

[END OF ARTICLE I]

ARTICLE II

REPRESENTATIONS OF THE CITY AND THE LENDER

Section 2.1 *Representations, Covenants and Warranties of the City.* The City represents, covenants and warrants to the Lender as follows:

- (a) The City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina.
- (b) The Constitution and laws of the State authorize the City to (1) execute and deliver this Contract and the Deed of Trust, (2) enter into the transactions contemplated thereby and (3) carry out its obligations thereunder.
- (c) The City has duly authorized and executed this Contract in accordance with the Constitution and laws of the State.
- (d) Neither the execution and delivery of this Contract or the Deed of Trust, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions or any charter provision, restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing.
- (e) No approval or consent is required from any governmental authority with respect to the entering into or performance by the City of the Deed of Trust, this Contract and all other documents related thereto and the transactions contemplated hereby and thereby, or if such approval is required, it has been or will be duly obtained.
- (f) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the City challenging the validity or enforceability of this Contract, the Deed of Trust or any other documents relating hereto and the performance of the City's obligations hereunder and thereunder.

Section 2.2 *Representations, Covenants and Warranties of the Lender.* The Lender represents, covenants and warrants to the City as follows:

- (a) The Lender is a national banking association duly organized and existing under the laws of the United States of America and has the power and authority to enter into this Contract.
- (b) Neither the execution and delivery of this Contract nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the organizational documents of the Lender or any restriction or any agreement or instrument to which the Lender is now a party or by which the Lender is bound.

Section 2.3 *Representation as to Role of Lender.* The City and the Lender acknowledge and agree that this transaction is an arm's-length commercial transaction between the City and the Lender. In connection with this transaction, the Lender is acting solely as a principal and not as the City's agent, advisor or fiduciary. The Lender has not assumed a fiduciary responsibility with respect to this transaction, and nothing in this transaction or in any prior relationship between the City and the Lender

will be deemed to create an advisory, fiduciary or agency relationship between the City and the Lender in respect of this transaction. The City has engaged an independent advisor to advise it in connection with this transaction and has consulted its own legal and other advisors to the extent it has deemed appropriate.

[END OF ARTICLE II]

ARTICLE III

ADVANCEMENT; ACQUISITION OF PROJECT

Section 3.1 *Advancement.* In consideration of the covenants, warranties and representations contained herein, and in consideration of the City's agreement to repay the moneys advanced hereunder and interest thereon, the Lender hereby agrees to advance to the City moneys at the times set forth herein in an amount not to exceed \$95,000,000.

For each request for an Advance, the City shall submit to the Lender, at least five Business Days prior to the requested date of disbursement, a complete written disbursement request (an "*Advance Request*") substantially in the form set forth in Exhibit B hereto, together with the documents or other items required thereunder. The Finance Director, the Deputy Finance Director, the Treasurer or a Senior Treasury Analyst (each, an "*Authorized Officer*") shall deliver each Advance Request by regular mail or facsimile or electronic communication. The proceeds of each Advance shall be used by the City solely to pay or to reimburse itself for the payment of the Project costs or Closing Costs to be funded pursuant to this Contract. The City shall use its best efforts to submit no more than one Advance Request per month to the Lender. The Lender shall make an Advance to the City in accordance with instructions to be provided to the Lender by the City in the Advance Request and send a written confirmation thereof (which may be delivered by electronic mail) to the City within four Business Days of the receipt by it of an Advance Request. The Advances shall not exceed the Commitment Amount on a cumulative basis. The Lender is not obligated to make any Advances to the City while an Event of Default continues. The City has the right to reduce the Commitment Amount in minimum increments of \$1,000,000, or if less, by the Unused Commitment Amount, by delivery of 30 days' prior written notice to the Lender.

The Advances shall be evidenced by the Advance Schedule. The Lender shall endorse on the Advance Schedule the amount of each Advance made by the Lender to the City hereunder and the date on which such Advance is made; provided, however, that any failure by the Lender to make any such endorsement shall not affect the obligations of the City hereunder in respect of such Advance. The Lender shall also endorse on the Advance Schedule the date and amount of each prepayment of the Amount Advanced made by the City to the Lender hereunder. The City shall repay to the Lender the aggregate amount of the Advances on the third anniversary of Closing, subject to the right of prepayment, as hereinafter provided. Any amount prepaid shall be deducted from the Commitment Amount.

Section 3.2 *Construction of Project.* The City shall cause the construction of the Project in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same.

Section 3.3 *Payment of Project Costs and Closing Costs.* The City shall be obligated to pay all Project costs and the Closing Costs when the same become due and payable from the proceeds of the Advancement or other available funds of the City, except to the extent that the Lender has agreed to pay such Closing Costs.

Section 3.4 *Disclaimer of Lender.* The City acknowledges and agrees that the design of the Project has not been made by the Lender, and the Lender has not supplied any plans or specifications with respect thereto and that the Lender (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Project or similar projects, (b) has not made any recommendation, given any advance nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the acquisition or construction thereof, (c) has not at any time had physical possession of the Project or any component part thereof or made any inspection

thereof or any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the City intends therefore, or (iii) is safe in any manner of respect.

THE LENDER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OR ANY COMPONENT PART THEREOF TO THE CITY OR ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE DESIGN OR CONDITION THEREOF; THE SAFETY, WORKMANSHIP, QUALITY OR CAPACITY THEREOF; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE LENDER THEREIN BEYOND THAT TITLE OR INTEREST WHICH THE CITY OBTAINS FROM THE LENDER PURSUANT HERETO; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE PROCEEDS DERIVED FROM THE ADVANCEMENT WILL BE SUFFICIENT, TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE CITY, TO PAY THE COST OF ACQUIRING THE PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT, THE COMPLETION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE CITY, AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE LENDER ARE HEREBY WAIVED BY THE CITY.

[END OF ARTICLE III]

ARTICLE IV

REPAYMENT OF THE ADVANCEMENT; SECURITY FOR REPAYMENT

Section 4.1 *Repayment of the Advancement.* (a) The City shall repay the interest component of the Installment Payments, in arrears, on each Installment Payment Date and the principal component of the Installment Payments on or before the third anniversary of Closing. The Adjusted LIBOR Rate shall be established by the Lender on Closing and on each Reset Date thereafter. The Adjusted LIBOR Rate shall not exceed the Maximum Rate. If it is impossible for the Lender to determine the Adjusted LIBOR Rate in connection with a Reset Date, the Advancement shall bear interest at a rate equal to the Lender's Base Rate until the Adjusted LIBOR Rate can be established.

(b) The Lender shall calculate the amount of interest payable on an Installment Payment Date on the basis of the actual number of days elapsed over a year of 360 days and shall be the amount of interest accrued from the next preceding Installment Payment Date (or Closing if interest has not been previously paid) to, but excluding, the Installment Payment Date on which interest is being paid based on the outstanding amount of the Advancement on each day at the applicable Adjusted LIBOR Rate during such period.

(c) The Lender shall notify the City of the Adjusted LIBOR Rate for each interest period within two Business Days of establishing such rate in writing by facsimile or email communication addressed to an Authorized Officer of the City. The Lender shall also notify the City not less than two Business Days before each Installment Payment Date of the amount due on such Installment Payment Date, such notice to be given in writing by facsimile or email transmission, confirmed by first-class mail, postage prepaid, and addressed an Authorized Officer of the City.

(d) All Installment Payments required to be made to the Lender hereunder shall be made to PNC Bank, National Association at the following address, 301 Fayetteville Street, Suite 2100, Raleigh, North Carolina 27601, or as may otherwise be directed by the Lender not less than two days before an Installment Payment Date. Payment of the Installment Payments may be made by wire transfer to any account in the continental United States specified by the Lender to the City in writing.

(e) On written demand, together with written evidence of the justification therefor, the City agrees to pay the Lender all direct costs incurred, any losses suffered or payments made by the Lender as a result of any Change in Law (hereinafter defined), imposing any reserve, deposit, allocation of capital or similar requirement (including without limitation, Regulation D of the Board of Governors of the Federal Reserve System) on the Lender, its holding company or any of their respective assets relative to this Contract. "*Change in Law*" means the occurrence, after the date of this Contract, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any governmental authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority; provided that notwithstanding anything herein to the contrary, (d) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (e) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "*Change in Law*", regardless of the date enacted, adopted or issued.

Section 4.2 *Term Loan.* If the City does not pay all outstanding principal and interest components due with respect to this Contract on or before the third anniversary of Closing, the amount due to the Lender on such date shall be deemed to amortize on an annual basis over a five-year period

from the third anniversary of the Closing until the fifth anniversary of the Closing and shall bear interest at a per annum rate equal to the Term Loan Interest Rate. Equal Payments of principal and interest shall be due monthly, payable on the first Business Day of each month. The occurrence of the events described in this Section 4.2 shall not constitute an event of default under this Contract.

Section 4.3 *Budget and Appropriation.*

(a) The officer of the City at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the City Council in any Fiscal Year in which this Contract shall be in effect, items for all Installment Payments and any additional payments required for such Fiscal Year under this Contract. Any budget item referred to in this Section shall be deleted from the applicable budget by the City Council only by the adoption of a resolution to such effect containing a statement of its reasons therefore, which resolution shall be adopted by roll-call vote and shall be spread on the minutes of the City Council. The City shall furnish the Lender with copies of its annual budget promptly after its adoption and copies of any amended budget affecting appropriations for Installment Payments or additional payments required under this Contract or the Deed of Trust; provided, however, that the City's obligation to provide the Lender with such information may be satisfied by publically releasing such information on the City's website. The City shall promptly provide written notice to the Lender of any Event of Nonappropriation.

(b) NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE CITY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE CITY FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE CITY TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE CITY TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBLIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE CITY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS CONTRACT AND THE TAXING POWER OF THE CITY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS CONTRACT.

No provision of this Contract shall be construed to pledge or to create a lien on any class or source of the City's moneys, nor shall any provision of this Contract restrict the future issuance of any of the City's bonds or moneys. To the extent of any conflict between this Section and any other provision of this Contract, this Section shall take priority.

Section 4.4 *Deed of Trust.* In order to secure its obligations under this Contract, including its obligation to make the Installment Payments hereunder, the City will execute and deliver the Deed of Trust simultaneously with the execution and delivery of this Contract.

Section 4.5 *No Set-Off, Recoupment, Etc.* Subject to Section 4.3 and the Enforcement Limitation, the obligation of the City to make the Installment Payments hereunder and to perform and observe the other covenants of this Contract shall be absolute and unconditional, and the City will pay without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim that the City may have against the Lender.

Section 4.6 *Unutilized Fee.* If Advancements for any Calculation Year did not, on average, as calculated on a 360-day Calculation Year, exceed 25% of the Commitment Amount, the City will pay the Lender an unutilized fee annually in arrears in an amount equal to 0.08% of the Unused Commitment Amount, calculated on the basis of a 360-day Calculation Year and actual number of days elapsed. The Lender will be responsible for calculating any such fee and providing written notice to the City of any fee due within 15 days of the end of each Calculation Year. The City shall pay such fee to the Lender within 30 days of receipt of the notice.

[END OF ARTICLE IV]

ARTICLE V

INSURANCE

Section 5.1 *Comprehensive General Liability.* The City shall maintain or cause to be maintained throughout the term of this Contract, a comprehensive general liability policy or policies in protection of the City, its officers, agents and employees. Said policy shall cover such losses and for such amounts and shall have such deductible amounts as shall be satisfactory to the City Council and, in the judgment of the City Council, shall protect the City against losses not protected under the principles of sovereign immunity. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

Section 5.2 *Workers' Compensation.* The City shall maintain workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure its employees against liability for compensation under the laws now in force in the State, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. The proceeds of such workers' compensation insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

Section 5.3 *Insurance.*

(a) The City shall procure and maintain, or cause to be procured and maintained, throughout the term of this Contract, insurance against loss or damage to any portion of the Mortgaged Property by fire and lightning, with extended coverage, and vandalism, theft and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance policies shall name the Lender as loss payee and additional insured. To the extent that any contractor shall provide an insurance policy or certificate of insurance (naming the Lender as loss payee and additional insured) demonstrating that the same coverage as is required by this subsection is being carried by such contractor with respect to the Mortgaged Property or any part thereof and adequately protects the interest of the City and the Lender, the insurance provided for by this paragraph (a) shall not be required with respect to the Mortgaged Property or such part thereof while the Mortgaged Property or such part thereof is so covered by such other insurance.

(b) If any buildings, fixtures or other improvements are located on any portion of the Mortgaged Property that is located in a special flood hazard area according to the Federal Emergency Management Agency ("*FEMA*"), then the City must maintain a flood insurance policy on the Mortgaged Property. If at any time during the term of the Contract, such portion of the Mortgaged Property is classified by FEMA as being located in a special flood hazard area, flood insurance will be mandatory. Should this occur, federal law requires the Lender to notify the City of the reclassification. If, within 45 days of receipt of notification from the Lender that any portion of the Mortgaged Property has been reclassified by FEMA as being located in a special flood hazard area, the City has not provided sufficient evidence of flood insurance, the Lender is mandated under federal law to purchase flood insurance on behalf of the City, and any amounts so expended shall immediately become debts of the City, shall bear interest at the rate specified in the Contract, and payment thereof shall be secured by the Deed of Trust.

(c) Such insurance required by this Section shall be in an amount equal to 100% of the replacement cost of the Mortgaged Property (except that such insurance may be subject to a reasonable and customary deductible clause for any one loss); provided, however, that in no event shall such insurance be maintained in an amount less than the aggregate Installment Payments designated as principal.

(d) The Net Proceeds of such insurance required by this Section shall be applied as provided in Section 6.1 and Section 6.2.

Section 5.4 Title Insurance. The City shall obtain, and cause to be maintained, a mortgagee's title insurance policy on the Mortgaged Property insuring the City's fee simple interest in the Mortgaged Property, subject only to Permitted Encumbrances, in an amount equal to the value of the Mortgaged Property, including the estimated value of the Police Headquarters, as constructed, as such value is estimated as of the time of this Contract, and as agreed on by the City and the Lender, naming the Lender as the named insured.

Section 5.5 General Insurance Provisions.

(a) The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Contract.

(b) All insurance policies required by this Article shall be issued by a responsible carrier authorized to do business under the laws of the State.

(c) The Lender shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Lender

(d) In lieu of obtaining the policies of insurance required by Section 5.1, Section 5.2 and Section 5.3, the City may adopt alternative risk management programs which the City determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the City. In addition, any insurance coverage pursuant to this Section may also be pursuant to a program whereby the City self-insures against certain losses up to a stated loss amount, and retains excess coverage from an insurer meeting the requirements of this Section.

(e) The insurance coverage required under Section 5.3 may be maintained under a blanket policy covering other properties of the City.

(f) The City shall cooperate fully with the Lender in filing any proof of loss with respect to any insurance policy maintained pursuant to this Article and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Mortgaged Property or any portion thereof.

[END OF ARTICLE V]

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

Section 6.1 *Obligation of the City to Repair and Replace the Mortgaged Property.* Unless applied to the payment in full or in part of the remaining Installment Payments pursuant to Section 6.2 and Section 10.1, the City shall cause the Net Proceeds of any insurance policies to be applied to the prompt repair, restoration or replacement of the Mortgaged Property. The Lender shall cooperate with the City in the administration and application of such Net Proceeds. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the City, subject to the Deed of Trust, and shall be included as part of the Mortgaged Property under this Contract.

Section 6.2 *Insufficiency of Net Proceeds.*

(a) If the Net Proceeds shall be insufficient to pay in full the cost of repair, restoration or replacement of the Mortgaged Property, as applicable, the City may elect to complete the work and pay any cost in excess of the amount of the Net Proceeds, and the City agrees that, if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the provisions of this subsection, the City shall not be entitled to any reimbursement therefore from the Lender, nor shall the City be entitled to any diminution of the Installment Payments payable under Section 4.1.

(b) If the City elects not to apply the Net Proceeds to the repair, restoration or replacement of the Mortgaged Property, as applicable, the City may apply the Net Proceeds of such insurance policies to the prepayment of the principal component of the Installment Payments in accordance with Section 10.1. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus the interest component of the Installment Payments accrued to the date of prepayment, such excess shall be paid to or retained by the City.

Within 90 days following the receipt of Net Proceeds, unless a further extension is approved by the Lender, the City shall commence the repair, restoration or replacement of the Mortgaged Property, as applicable, or shall elect, by written notice to the Lender, to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of Section 10.1. For purposes of this subsection, “commence” shall include the retention of an engineer in anticipation of the repair, restoration, modification, improvement or replacement of the Mortgaged Property. In the event that the City shall, after commencing the repair, restoration, modification, improvement or replacement of the Mortgaged Property, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be insufficient for the accomplishment thereof, the City may, subject to the provisions set forth above, elect to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of Section 10.1.

Section 6.3 *Cooperation of the Lender.* The Lender shall cooperate fully with the City in filing any proof of loss with respect to any insurance policy covering the events specified in Section 5.1. In no event shall the Lender or the City voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Mortgaged Property without the written consent of the other.

[END OF ARTICLE VI]

ARTICLE VII

COVENANTS OF THE CITY

Section 7.1 *Access to the Mortgaged Property.* The City agrees that the Lender and its agents and employees, shall have the right, at all reasonable times during normal business hours of the City on the furnishing of reasonable notice to the City under the circumstances, to examine and inspect the Mortgaged Property or any portion thereof. The City further agrees that the Lender and the Lender's successors, assigns or designees shall have such rights of access to the Mortgaged Property as may be reasonably necessary to cause the proper maintenance of the Mortgaged Property in the event of failure by the City to perform its obligations hereunder. No right of inspection shall be deemed to impose on the Lender any duty or obligation whatsoever to undertake any inspection, and no inspection made by the Lender shall be deemed to impose on the Lender any duty or obligation to identify any defects in the Mortgaged Property or to notify any person with respect thereto.

Section 7.2 *Maintenance, Utilities, Taxes and Assessments.*

(a) Subject to the Enforcement Limitation, the City shall provide for the repair and replacement of any portion of the Mortgaged Property required on account of ordinary wear and tear or want of care.

(b) Subject to the Enforcement Limitation, the City shall also pay, or provide for the payment of, all taxes and assessments, including, but not limited to, utility charges of any type or nature levied, assessed or charged against any portion of the Mortgaged Property; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid as and when the same become due.

(c) The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided, however, that prior to such nonpayment, the City shall furnish to the Lender an opinion of counsel acceptable to the Lender to the effect that, by nonpayment of any such items, the interest of the Lender in the Mortgaged Property will not be materially endangered and that all or any portion of the Mortgaged Property will not be subject to loss or forfeiture. Otherwise, subject to the Enforcement Limitation, the City shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

Section 7.3 *Modification of the Mortgaged Property.* The City shall, in its sole discretion and at its own expense, have the right to make additions, modifications and improvements to any portion of the Mortgaged Property if such additions, modifications or improvements are necessary or beneficial for the use of the Mortgaged Property. Such additions, modifications and improvements shall not in any way damage any of the Mortgaged Property (unless such damage is to be repaired as provided in Section 6.1) or cause the Mortgaged Property to be used for purposes other than those authorized under the provisions of law, and the Mortgaged Property, on completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Mortgaged Property immediately prior to the making of such additions, modifications and improvements. All such items, as so modified, shall be subject to the lien of the Deed of Trust.

Except for Permitted Encumbrances, the City shall not permit any lien to be established or remain against the Mortgaged Property for labor or materials furnished in connection with any additions, modifications or improvements made by the City pursuant to this Section; provided, however, that if any

such lien is established, the City may, at its own expense and in its name, in good faith contest any lien filed or established against the Mortgaged Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that the City shall furnish to the Lender full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

Section 7.4 *Encumbrances.* Except as provided in this Article (including, without limitation, Section 7.2 and this Section), the City shall not, directly or indirectly, create, incur, assume or suffer to exist any pledge, lien, charge, encumbrance or claim, as applicable, on or with respect to the Mortgaged Property, other than Permitted Encumbrances. Except as expressly provided in this Article and subject to the Enforcement Limitation, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim for which it is responsible if the same shall arise at any time; provided, however, that the City may contest any such lien, charge, encumbrance or claim if it desires to do so and if it provides the Lender with full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

Section 7.5 *Indemnification of the Lender and the LGC.* To the extent permitted by law, the City covenants to defend, indemnify and hold harmless the Lender, the LGC and their respective officers, directors, members, employees and agents (collectively, the “*Indemnified Party*”) against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Contract or the Deed of Trust and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Contract or the Deed of Trust. In particular, without limitation, the City shall and hereby agrees to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the City in the performance of any of its obligations under this Contract or the Deed of Trust.

Section 7.6 *Financial Statements.* The City agrees that it will furnish the Lender, when the same become available, but in no event later than 180 days after the end of the Fiscal Year, its annual audited financial statements; provided, however, that the City’s obligation to provide the Lender with such information may be satisfied by publically releasing such information on the City’s website or the Municipal Securities Rulemaking Board’s EMMA system; provided further, however, that no event of default hereunder shall be deemed to have occurred unless the City fails to furnish the Lender its annual audited financial statements later than 270 days after the end of the Fiscal Year. The City agrees that it will furnish the Lender with such other financial information or operating reports as reasonably requested.

[END OF ARTICLE VII]

ARTICLE VIII

ASSIGNMENT, LEASING AND AMENDMENT

Section 8.1 *Assignment by the Lender.* The Lender may, at any time and from time to time, assign to any bank, insurance company or similar financial institution all or any part of its interest in the Mortgaged Property or this Contract, including, without limitation, the Lender's rights to receive the Installment Payments and any additional payments due and to become due hereunder. Reassignment by any assignee may also only be to a bank, insurance company or similar financial institution or to any other entity approved by the LGC. The City agrees that this Contract may become part of a pool of obligations at the Lender's or its assignee's option. The Lender or its assignees may assign or reassign either the entire pool or any partial interest herein. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in the Mortgaged Property or this Contract shall be effective unless and until the City shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each assignee. The City covenants and agrees with the Lender and each subsequent assignee of the Lender to maintain for the full term of this Contract a written record of each such assignment or reassignment. The City hereby appoints the Lender as its agent for the purpose of maintaining any written record in connection with an assignment under this Section, and the Lender hereby accepts such appointment. The City agrees to execute any document reasonably required by the Lender in connection with any assignment. Notwithstanding any assignment by the Lender of its interest in this Contract, the City shall not be obligated to provide any financial or other information to any assignee of the Lender except as set forth in Section 7.7.

After the giving of notice described above to the City, the City shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgement shall in no way be deemed to make the assignment effective.

The Lender covenants that any disclosure document circulated by it or an assignee in connection with the sale of the Lender's rights in this Contract will contain a statement to the effect that the City has not reviewed and is not responsible for the disclosure document. The Lender covenants to defend, indemnify and hold harmless the City and its officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject on account of any statement included in a disclosure document, or failure to include a statement in a disclosure document, unless the City shall have expressly approved the use of such disclosure document.

Section 8.2 *Assignment by the City and Release of Mortgaged Property.*

- (a) This Contract may not be assigned by the City.
- (b) The City may lease all or any portion of the Mortgaged Property, subject to each of the following conditions:
 - (i) the obligation of the City to make Installment Payments hereunder shall remain obligations of the City;
 - (ii) the City shall within 30 days prior to the execution and delivery of any such lease, furnish or cause to be furnished to the Lender, a true and complete copy of the form of such lease;

(iii) the Lender shall have received an opinion of counsel to the City to the effect that such lease is subordinate in all respects to the lien of the Deed of Trust, as applicable; and

(iv) the lease by the City shall not cause the Mortgaged Property to be used for a purpose other than a governmental or proprietary function of the City authorized under the provisions of the Constitution and laws of the State.

(c) The City may from time to time sell, exchange or otherwise dispose of all or any portion of the Mortgaged Property in accordance with the release provisions of the Deed of Trust. The Lender shall cooperate fully with the City in executing and filing any documents necessary to effect the release of such Mortgaged Property from the lien created by the Deed of Trust, as applicable, including, without limitation, any documents necessary to cancel the Deed of Trust.

[END OF ARTICLE VIII]

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 9.1 *Events of Default Defined.* The following shall be “events of default” under this Contract and the terms “events of default” and “default” shall mean, whenever they are used in this Contract, any one or more of the following events:

(a) The failure by the City to pay any Installment Payment required to be paid hereunder when due.

(b) The occurrence of an Event of Nonappropriation.

(c) Failure by the City to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a) or (b) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Lender; provided, however, that if the failure stated in the notice cannot be reasonably corrected within the applicable period and if corrective action is instituted by the City within the applicable period and diligently pursued, the City shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued.

(d) The City becomes insolvent or the subject of insolvency proceedings; or is unable, or admits in writing its inability, to pay its debts as they mature; or makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or files a petition or other pleading seeking reorganization, composition, readjustment or liquidation of assets, or requesting similar relief; or applies to a court for the appointment of a receiver for it or for the whole or any part of its property; or has a receiver or liquidator appointed for it or for the whole or any part of its property (with or without the consent of the City) and such receiver is not discharged within 90 consecutive days after his appointment; or becomes the subject of an “order for relief” within the meaning of the United States Bankruptcy Code; or files an answer to a creditor’s petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within 60 consecutive days after the same is filed against the City.

(e) The occurrence of an “Event of Default” under the Deed of Trust as defined therein.

(f) Any warranty, representation or statement made by the City herein or in the Deed of Trust or any other document executed and delivered by the City in connection herewith is found to be incorrect or misleading in any material respect as of the date made.

Section 9.2 *Remedies on Default.* On the occurrence of any event of default under Section 9.1, the Lender may, without any further demand or notice, exercise any one or more of the following remedies:

(a) declare the entire amount of the principal component of the Installment Payments and the accrued and unpaid interest component to the date of declaration to be immediately due and payable;

(b) exercise all remedies available at law or in equity or under the Deed of Trust, including sale of the Mortgaged Property, and apply the proceeds of any such sale or other disposition, after deducting all costs and expenses, including court costs and reasonable attorneys' fees incurred with the recovery, repair, storage and other sale or other disposition costs, toward the principal component and accrued and unpaid interest of the balance of Installment Payments due;

(c) subject to the Enforcement Limitation, proceed by appropriate court action to enforce performance by the City of the applicable covenants of this Contract or to recover for the breach thereof; and

(d) the interest rate shall immediately be converted to the Default Rate.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE CITY IN FAVOR OF THE LENDER OR ANY OTHER PERSON IN VIOLATION OF SAID SECTION 160A-20, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE MORTGAGED PROPERTY OR THE EQUIPMENT IS INSUFFICIENT TO PRODUCE ENOUGH MONEYS TO PAY IN FULL ALL REMAINING OBLIGATIONS HEREUNDER.

Section 9.3 *No Remedy Exclusive.* No remedy conferred herein on or reserved to the Lender is intended to be exclusive, and every such remedy is cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. To the extent permitted by law, any delay or omission to exercise any right or power accruing on any default does not impair any such right or power nor is to be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article, it is not necessary to give any notice other than such notice as may be required in this Article or by law.

Section 9.4 *Agreement to Pay Attorneys' Fees and Expenses.* If the City defaults under any of the provisions hereof and the Lender employs attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the City contained herein, the City agrees that it will pay on demand to the Lender, subject to the limitations and provisions of Section 6-21.2 of the General Statutes of North Carolina, as amended, the reasonable fees of such attorneys and such other expenses so incurred by the Lender. For purposes of this Section, the reasonable fees of attorneys means attorneys' fees actually incurred at such attorneys' standard hourly rate for such services and will not be based on any percentage of the outstanding amount due; provided, however that such attorneys' fees may not exceed the maximum amount permitted by law.

Section 9.5 *No Additional Waiver Implied by One Waiver.* If any provision contained in this Contract is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder except as may be provided by law.

[END OF ARTICLE IX]

ARTICLE X

PREPAYMENT OF INSTALLMENT PAYMENTS

Section 10.1 *Prepayment of Installment Payments.*

(a) On at least 30 days' prior written notice to the Lender (unless otherwise waived by the Lender), the City may prepay on any date, in whole or in part, the outstanding principal component of the Installment Payments at a prepayment price equal to 100% of the outstanding principal component of the Installment Payments to be prepaid, plus accrued interest to the prepayment date.

(b) If the City has received Net Proceeds and elected pursuant to Section 6.2 not to apply such Net Proceeds to the repair, replacement or restoration of the Project, the City may prepay, in whole or in part up to the amount of the Net Proceeds received, the outstanding principal component of the Installment Payments at any time, on at least 30 days' prior written notice to the Lender (unless otherwise waived by the Lender), at a prepayment price equal to 100% of the principal component of the Installment Payments to be prepaid, plus accrued interest to the date of prepayment.

(c) On any prepayment in part, such prepayment is to be applied as directed by the City in writing to the Lender.

[END OF ARTICLE X]

ARTICLE XI

MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder are sufficiently given and deemed to have been received on the earlier of actual receipt or three days after deposit in the United States first-class, registered or certified mail (unless otherwise provided herein), postage prepaid, at the following addresses:

If to the City: City of Durham, North Carolina
101 City Hall Plaza
Durham, North Carolina 27701
Attention: Finance Director

If to the Lender: PNC Bank, National Association
301 Fayetteville Street
Suite 2100
Raleigh, NC 27601
Attention: Casey L. Turner

The City and the Lender, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 11.2 Binding Effect. This Contract is binding on and inures to the benefit of the City and the Lender and their respective successors. Whenever in this Contract either the City or the Lender is named or referred to, such reference is deemed to include the successors thereof and all the covenants and agreements in this Contract contained by or on behalf of the City or the Lender bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 11.3 Severability. If any provision of this Contract is held invalid or unenforceable by a court of competent jurisdiction, such holding does not invalidate or render unenforceable any other provision hereof.

Section 11.4 Execution in Counterparts. This Contract may be executed in any number of counterparts, each of which is an original and all of which constitute but one and the same instrument.

Section 11.5 Commitment Letter. The terms of this Contract supersede the terms of any commitment letter, proposal or other term sheet provided by the Lender. To the extent of any conflict between this Contract and such other documents, this Contract takes priority.

Section 11.6 Applicable Law/Waiver of Jury Trial. This Contract is to be construed and governed in accordance with the laws of the State of North Carolina. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or any other related document or the transactions contemplated hereby (whether based on contract, tort or any other theory).

Section 11.7 E-Verify. The Lender understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Lender uses E-Verify to verify the work authorization of its employees in accordance with Section 64-

26(a) of the General Statutes of North Carolina, as amended. The Lender will not use any subcontractors in connection with this Contract.

Section 11.8 *Iran Divestment Certification.* The Lender acknowledges that the execution and delivery of this Contract constitutes the Lender's certification to the North Carolina State Treasurer that, as of the date of execution and delivery, the Lender is not listed on the Final Divestment List created and maintained by the North Carolina Department of State Treasurer pursuant to the Iran Divestment Act of 2015, Chapter 143C-6A-1 et seq. of the General Statutes of North Carolina (the "*Iran Divestment Act*").

[END OF ARTICLE XI]

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the City and the Lender have caused this Contract to be executed in their respective names by their respective duly authorized officers as of the date first above written.

CITY OF DURHAM, NORTH CAROLINA

[SEAL]

By: _____
David Boyd
Finance Director

PNC BANK, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT, DATED AS OF APRIL 15, 2016,
BETWEEN THE CITY OF DURHAM, NORTH CAROLINA AND PNC BANK, NATIONAL ASSOCIATION]

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The foregoing Installment Financing Contract has been approved under the provisions of Section 160A-20 and Article 8 of Chapter 159 of the General Statutes of North Carolina, as amended.

Secretary, Local Government Commission
of North Carolina

EXHIBIT A

ADVANCE SCHEDULE

DATE	AMOUNT
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EXHIBIT B

ADVANCE REQUEST

[To be placed on City's Letterhead]

[Date]

PNC Bank, National Association
301 Fayetteville Street
Suite 2100
Raleigh, NC 27601
Attention: Casey L. Turner

Re: Request for disbursement of funds under an Installment Financing Contract, dated as of April 15, 2016 (the "*Agreement*"), between the City of Durham, North Carolina (the "*City*") and PNC Bank, National Association (the "*Lender*")

Pursuant to the terms and conditions of the Contract, the City hereby requests the disbursement of funds to the City as an Advance under the Contract for the costs described below. Terms used herein but not defined herein shall have the meanings given to such terms in the Contract.

This is request number _____ for funds under the Contract in the amount of _____. The requested disbursement should be made to the credit of the City's account in accordance with the following instructions:

[Insert wire transfer or other instructions.]

The City makes the following representations in connection with this request:

1. The requested disbursement does not exceed the Unused Commitment Amount.
2. The requested disbursement will be used by the City to reimburse itself for costs of the Project/Closing Costs previously paid by it.
3. The requested disbursement has not been the subject of any previous request by the City.
4. To the best knowledge of the undersigned, no "default" or "event of default" has occurred and is continuing under the Contract.

5. The undersigned is an Authorized Officer.

CITY OF DURHAM, NORTH CAROLINA

By: _____

Printed name: _____

Title: _____